

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the adoption of Rule I	)	NOTICE OF ADOPTION AND
and amendment of ARM 37.37.101,	)	AMENDMENT
37.86.2207, 37.88.907, and 37.88.1133	)	
pertaining to implementation of a	)	
Children's Mental Health Direct Care	)	
Worker Wage Increase	)	
	)	

TO: All Interested Persons

1. On April 6, 2006, the Department of Public Health and Human Services published MAR Notice No. 37-375 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules, at page 863 of the 2006 Montana Administrative Register, issue number 7.

2. The department has adopted New Rule I (37.88.1111) as proposed.

3. The department has amended ARM 37.37.101, 37.86.2207, 37.88.907, and 37.88.1133 as proposed.

4. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: We support the proposed rules and testified in their favor at the public hearing held on April 26, 2006. We are very grateful to the Montana Legislature for supporting this direct care wage increase and thank the Department of Public Health and Human Services for working with children's mental health providers to determine qualifications, reporting, and monitoring mechanisms.

RESPONSE: The department worked diligently with providers and association representatives in order to implement the Children's Mental Health Direct Care Wage Supplement on time. The department thanks the providers and association representatives for their cooperation. The industry provided feedback to the department on the proposed new rule and rule amendments and we are grateful for their assistance. We believe that the supplement for direct care worker wage and benefit increases implemented through the department will help providers recruit and retain qualified direct care staff.

COMMENT #2: It is somewhat of an administrative burden for providers who qualified for a direct care wage add on to track and account for data collected by the department, but the burden is offset by the increased wages for their staff.

RESPONSE: The department recognizes the additional administrative burden experienced by qualified providers who choose to receive a direct care wage add on. However, the legislative appropriation in the 2005 General Appropriations Act, 2005 Laws of Montana Chapter 607 (commonly referred to as "HB 2") requires the department to document that the money was used solely for direct care worker wage and benefit increases. HB 2 specifies the data that must be reported. No other options were open to or considered by the department. The department worked closely with providers to minimize the burden created by the data reporting requirements.

COMMENT #3: It has been somewhat difficult to separate the duties of staff who work with Medicaid or non-Medicaid youth or with both. Currently these funds are only available for staff working with Medicaid youth and services. To achieve equity for all direct care staff, we will recommend the 2007 Montana Legislature adopt an additional appropriation to cover those direct care staff working with non-Medicaid youth.

RESPONSE: We welcome the providers' support for this rate increase. The legislature, not the department, will determine future availability of funding and how that funding will be applied. As long as the legislature matches the funding with federal Medicaid funds to implement the wage increase, we will continue to limit allocation of funds to Medicaid patients.

COMMENT #4: Even though the rationale language suggests a sunset of the rules by mentioning the July 2007 sunset several times, we recommend that the sunset language be specifically included in the rule language.

RESPONSE: The department decided not to put additional sunset language in the rules at this time. The department believes the language it proposed is sufficiently clear. If the legislature does not provide continued funding for this wage increase, the rule provisions will be repealed. If continued funding is appropriated by the legislature for state fiscal year (SFY) 2009 and SFY 2011, the rule provision will remain in place and will be amended, if necessary.

COMMENT #5: As stated at the hearing by Peter Surdock, any funds allocated to a provider that remain after the direct care staff raises may be used to increase wages for support staff (housekeeping, etc). This is written into the contract language, not in the rule itself. Most providers did not understand this. We ask that you revisit your decision regarding this. We recommend that this option be written in the actual rule.

RESPONSE: The department declines to accept the recommendation to include this in the rule. This provision was developed in response to provider questions and was discussed with providers as the process for implementation of the wage supplement was developed. Because the rule requires a contract between the department and the provider as a condition of implementation of the wage increase, we do not believe adding the requested change to the rule is necessary. The

contract provides accountability as well as flexibility, if needed, that is not available through rule making. Changes in the contract are possible with an agreement by both parties. The department believes it is not necessary to include administrative details in the rules because this can and does result in difficulty with implementation of cumbersome regulations and increases confusion. If contractors have any questions about this allowance, the department continues to be available to meet with the contractors individually or as a group to clarify the contract terms and expectations.

COMMENT #6: We strongly recommend that the Department of Public Health and Human Services and the Montana Legislature maintain this appropriation as a priority and secure this funding in the future as a component of the base budget. We are also interested in how adjustments to this appropriation will be made over time including but not limited to changes in direct care staff numbers, inflation, and cost of living.

RESPONSE: We appreciate the support of providers for the continuation of this wage increase. If the legislature approves an appropriation for SFY 2008 through SFY 2009, the department anticipates it could use the same approach to allocate the funding. All eligible providers would report the information necessary to allocate funds. This would allow for the addition of qualified providers as well as the accommodation of changes in staff numbers or other circumstances for providers already participating in this wage supplement. The department would also have the opportunity to evaluate other methods of implementation that may provide improvements in the process.

5. This new rule and rule amendments are applied retroactively to October 1, 2005. There is no negative impact to providers or employees.

/s/ John Koch  
Rule Reviewer

/s/ Russell Cater for  
Director, Public Health and  
Human Services

Certified to the Secretary of State June 12, 2006.